

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

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Governor

August 15, 1996

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The Honorable William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

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FCC COMM. PROC.

Dear Secretary Caton:

Attached please find an original plus sixteen copies of Comments from the State of Colorado in the matter of CC Docket No. 95-116, Telephone Number Portability.

Yours truly,

Patricia A. Friscic

Patricia A. Friscic
Administrative Assistant

Enclosures (17)

16 copies made
8/16/96
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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

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IN THE MATTER OF

Telephone Number Portability

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**CC Docket No. 95-116
RM 8535**

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JOINT COMMENTS OF

**THE COLORADO PUBLIC UTILITIES COMMISSION STAFF AND
THE COLORADO OFFICE OF CONSUMER COUNSEL**

August 16, 1996

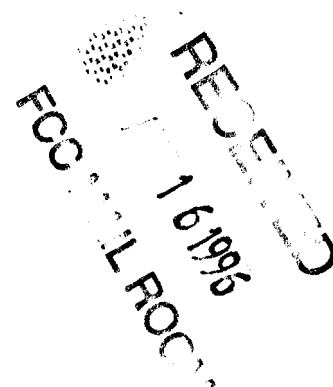
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**JOINT COMMENTS OF
THE STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION AND
THE COLORADO OFFICE OF CONSUMER COUNSEL**

The Staff of the Colorado Public Utilities Commission ("CoPUC Staff") and the Colorado Office of Consumer Counsel ("Colorado OCC") respectfully submit these joint comments ("Colorado Joint Comments") before the Federal Communications Commission ("Commission" or "FCC") regarding the Further Notice of Proposed Rulemaking ("FNPRM") relating to the implementation of Telephone Number Portability.

I. INTRODUCTION

1. The Colorado Public Utilities Commission ("CoPUC") established a Local Number Portability Task Force in Decision C95-785 (Docket No. 95M-392T), dated September 7, 1995. The overall purpose of this LNP Task Force was to make recommendations to the CoPUC regarding the implementation of a long term solution for Local Number Portability

("LNP"). This Task Force¹ has met numerous times beginning in late 1995 and is continuing to meet. Officially, the CoPUC has adopted Location Routing Number ("LRN") as the appropriate network solution for long term LNP in Colorado. Additionally, the CoPUC has accepted a report regarding specific recommendations from the Task Force. Based upon comments by the Commission in this docket, we believe that the FCC Staff is fully aware of all of our activities to date.

2. In this FNPRM, the Commission has requested comments on numerous issues relating to costs and cost recovery for long term LNP. The Colorado LNP Task Force is currently in the process of preparing proposed revisions to the Colorado LNP Rule. In that process, the issue of cost recovery will be presented to the CoPUC. We expect that the Task Force will propose a modification to the Colorado LNP Rule that contains various options for cost recovery. CoPUC Staff and the Colorado OCC themselves will propose cost recovery mechanism(s) to the Task Force and to the CoPUC. At this time, the CoPUC has not ruled on any cost recovery proposals for long term LNP. These joint comments provide the opinions of the CoPUC Staff and the Colorado OCC and do not necessarily represent the opinion of the Colorado LNP Task Force, its members, or the CoPUC.

¹ The Colorado LNP Task Force is actually composed of a Steering Committee that oversees all actions, a Legal Subcommittee, an Operations and Implementation Subcommittee, a Requirements Subcommittee, and a Cost Recovery Subcommittee. The Steering Committee is officially composed of CoPUC Staff, Colorado OCC, U S WEST, AT&T, MCI, TCI, TCG, the Colorado Independent Telephone Association, and the Colorado 9-1-1 Task Force. All meetings have been open to the public; however, only official members are granted voting rights.

3. The Colorado LNP Task Force has also decided to continue with its current implementation schedule. Specifically, the LNP Task Force has decided to continue with the process of establishing a Limited Liability Company ("LLC") for the purposes of selecting an independent third party administrator of the Colorado LNP. The Request for Proposals ("RFP") will be released by the LLC as soon as it is formed in the very near future. Selection of an appropriate vendor will likely occur within a few months of the release of the RFP. Since the issuance of the FCC Decision on July 2, 1996, the Colorado Task Force has also approached the other thirteen states in the U S WEST region to determine interest in moving toward a regional administrator for the U S WEST region. Since the deadline for the North American Numbering Council (NANC) to select a vendor(s) is seven months after their first meeting, the Colorado LNP Task Force believes that its efforts will assist the NANC in making its decisions regarding the third party administrator in this region. However, if the NANC makes a decision contrary to any decisions made by states in this region, each state would have the options made available in the FCC order.

II. DISCUSSION

A. The FCC has correctly defined and limited the general categories of LNP Costs

4. The FCC has identified three general categories of costs²: (1) costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability; (2) carrier-specific costs

² FNPRM at ¶ 208.

directly related to providing number portability; and (3) carrier-specific costs not directly related to number portability. We agree with this general assessment of cost categories.

5. The FCC has tentatively concluded that the “competitively neutral” standard in Section 251(e)(2) applies only to number portability costs, and not to cost recovery of carrier-specific, non-number portability-specific costs³. The FCC also tentatively concludes that section 251(e)(2) does not address recovery of the costs of number portability from consumers, but only the allocation of such costs among carriers. We agree with these conclusions. In fact, our discussion *infra* will explain that any decisions regarding cost recovery from consumers should remain with the states.

6. The FCC has requested comments regarding the meaning of the statutory language “all telecommunications carriers.”⁴ In its rules, the CoPUC has adopted the definitions directly from the federal statute and we believe that the FCC should do the same. All telecommunications carriers without limitation must participate in LNP cost recovery mechanisms.

7. The FCC has tentatively concluded that (1) a competitively neutral cost recovery mechanism should not give one carrier an appreciable, incremental cost advantage over another carrier when competing for a specific subscriber and (2) a competitively neutral cost

³ FNPRM at ¶ 209.

⁴ *Id.*

recovery mechanism should not have a disparate effect on the ability of competing carriers to earn a normal return⁵. We agree with this general conclusion.

8. At this time the FCC has reached only general conclusions regarding costs and cost recovery for LNP. The FCC has tentatively concluded that the pricing for state-specific databases should be governed by the pricing principles established in this proceeding. We agree that the FCC should implement specific general policies as are described in the FNPRM at ¶ 208-211 regarding cost recovery for LNP, but we do not agree that the Commission should establish the kind of specific cost recovery policies as proposed throughout the FNPRM. It is inappropriate for the FCC to get into the business of ratemaking for local service. In our view, such decisions are better left to the states.

B. Costs of Facilities Shared by All Carriers for the Provision of Number Portability

1. Costs of facilities shared by all carriers for the provision of number portability should be shared by all users in an equitable non-discriminatory manner.

9. The FCC seeks comment on whether the database administrator should recover its costs from all telecommunications carriers through a charge assessed only on those carriers using the databases, or on all carriers, whether or not they use the databases⁶. In addition, the FCC seeks comments on specific types of cost recovery schemes for the database administrator. Our opinion is:

- The costs should be recovered from those carriers that use the database only.

⁵ FNPRM at ¶ 210.

⁶ FNPRM at ¶ 212.

- The cost of the database administrator should be recovered from both carriers who receive downloaded database information and those who provide information uploaded to the database.
- Carriers receiving downloaded information should be charged based on an incremental cost only, without any allocation of the database administrator's common and overhead costs.
- The costs of receiving, storing, and processing information by the database administrator should be recovered from the carriers that actually provide uploaded information to the administrator. These costs should also include the database administrator's common and overhead costs.
- All costs should be allocated using the same general principles of competitive neutrality. Further, the FCC should allow the states the same latitude in determining the actual cost recovery scheme as in the interim number portability cost recovery proposal⁷. Within the guidelines specified in the interim portability cost recovery proposal, each state should determine an appropriate cost recovery policy. Gross telecommunications revenues is only one method that would satisfy the Commission's criteria⁸. Other

⁷ FNPRM at ¶ 117-140.

⁸ The Commission uses an example from a public finance textbook to support the use of gross telecommunications revenues as the "second best" alternative to economic profits. We will only

methods might be equally competitively neutral depending upon makeup of the competitive carriers operating in each state. This specific decision should be left to the states.

2. Specific Cost Recovery Policies Should Remain With The States

10. The FCC seeks comment on the appropriate recovery of these costs through carriers or end-users. We have already stated above that we believe the costs should be recovered from carriers using a specific method. However, it is beyond the purview of the FCC to determine how those internal carrier costs might get allocated to end-users through other services. This is a responsibility appropriately delegated to the states.

11. The FCC tentatively concludes that non-recurring costs (the initial cost of setting up the hardware and software for the databases) are one of three types of costs generated. With respect to these costs, the FCC concludes that these nonrecurring costs could be recovered through monthly charges or through a one-time payment. We believe that this is a matter that should be determined by the states. Our initial conclusion is that non-recurring costs should be amortized over the life of the contract and billed as part of the charges to carriers. Again, this should be determined by the states according to general policy guidelines from the FCC relating to competitive neutrality.

B. Direct Carrier-Specific Costs to Implement Number Portability

agree that this is one method. It is likely that this method is one of many, similar to the many “best” methods for allocation of the cost of telecommunications loop plant to services.

1. Direct Carrier-Specific Costs to Implement Number Portability Should be Recovered by All Users in an Equitable Non-discriminatory Manner.

12. These costs should also be recovered in a manner that comports with the statutory requirement for competitive neutrality. Inasmuch as the interim portability solution suggests methods for recovery of similarly incurred costs, the FCC should employ the same general policy here. Specific details for cost recovery should remain with the states. Because of the wide differences in existing regulatory schemes, levels of competition, competitive entrants, geography, topography, and technologies between states and regions, the specific cost recovery proposals are more appropriately dealt with at the state level.

2. The FCC Should Not Mandate Specific Cost Recovery Mechanisms for Carrier-Specific Costs.

13. The FCC seeks comment on whether it can or should mandate a mechanism by which incumbent LECs or others may recover these costs, from either end-users or other carriers. Our preferred option is that the FCC provide only general policy guidelines and leave the rest to the states. It should be noted that any scheme that determines whether these costs are exogenous or endogenous costs and whether the costs should be recovered from other carriers or end-users, or some proportion from each, is a matter rightfully left to the states. If the

FCC decides to produce more specific guidelines, it should recognize that these costs imposed upon the carriers are legitimate costs of providing LNP and should be treated as such.

14. In any event, any method that proposes to recover the costs entirely from carriers or end users would be inadvisable. Requiring carriers to recover one hundred percent of the costs through charges to other carriers would likely fail the “competitively neutral” test. Requiring the incumbent LEC's end users to pay one hundred percent of the costs as a part of basic local service would fail to allocate the costs fairly among other services and persons who should contribute to the cost of the service. Traditionally, network upgrades, even when performed for the benefit of specific services, are not treated exogenously in the ratemaking process. Rather, states have used a wide variety of mechanisms reflecting a wide variety of individual policy concerns to make the ratemaking decisions. All of these reasons indicate that the FCC should provide only general policy while leaving the specifics to the individual states.

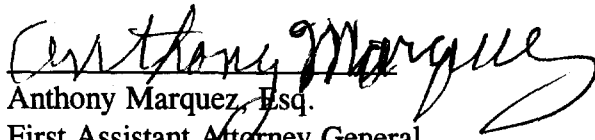
C. Indirect Carrier-Specific Costs to Implement Number Portability

1. Indirect Carrier-Specific Costs to Implement Number Portability Should Be Borne by Individual Carriers

15. The FCC tentatively concludes that carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades. The Commission also concludes that carrier-specific costs are not subject to requirements set forth

in Section 251. For the reasons stated in the discussion regarding carrier-specific costs related to number portability, we believe that these costs and their appropriate recovery should be the responsibility of the states. The FCC should not make any policy mandates regarding the cost recovery of these costs.

Dated at Denver, Colorado this 15th day of August, 1996.
Respectfully submitted,


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